UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,039	07/19/2001	Jarmo Makinen	059643.00128	8466

32294   7590   09/22/2008
SQUIRE, SANDERS & DEMPSEY L.L.P.
8000 TOWERS CRESCENT DRIVE
14TH FLOOR
VIENNA, VA 22182-6212

EXAMINER
DANIEL JR, WILLIE J

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
09/22/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	09/909,039	MAKINEN ET AL.
	Examiner	Art Unit	
	WILLIE J. DANIEL JR	2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>29 August 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

       Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

       NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

     <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Charles N. Appiah/
Supervisory Patent Examiner, Art Unit 2617

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)   **Advisory Action Before the Filing of an Appeal Brief**   Part of Paper No. 012–02

Continuation of 11. does NOT place the application in condition for allowance because:

1. Applicant's arguments filed 29 August 2008 have been fully considered but they are not persuasive. The Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see the comments in this section and Final Action mailed on 24 July 2008).

2. In response to applicant's argument of claims 38, 44, 48, and 52 on pg. 19, 4th par. "…claims recitations yields the same result…", the Examiner respectfully disagrees. The claims states "…decreased until the pseudo error occurrence is above a predetermined level, AND is increased when the pseudo error occurrence is above the predetermined level…". Furthermore, the claims appear to be referring to the same level when stating "…a predetermined level…the predetermined level…" as there is no difference in the level. What factor constitutes a distinguishing condition to determine whether to increase or decrease transmission power? The Examiner advises applicant to review the instant application (see abstract; pg. 6, lines 6-9). If applicant considers the claim language to be correct, the language of the claims appear to result in describing a condition such as a continuous toggling/bouncing effect, so when does the system determines a level to stop increasing and decreasing?

3. In response to applicant's argument of claim 12 on pg. 20, 2nd full par. "…does not disclose a pseudo error…", the Examiner respectfully disagrees. Applicant further argues on pg. 24, 2nd full par., "…pseudo error…a type of error that has not yet occurred…" which explicitly states that a pseudo error is an error. Also, see specification pg. 7, 3rd - 4th full par. which describes pseudo errors being the detected. For example, a psuedo error is a type of error that does not fulfill a condition (e.g., limit value threshold), in other words, errors that are acceptable or not enough errors for the system to consider the pseudo errors to be an actual error. Second example, pseudo errors become an actual error if a condition (e.g., limit value threshold) is fulfilled, in other words, a number of pseudo errors that cause the system to consider the pseudo errors to be an actual error in which the system increases power.
    Applicant has failed to appreciate the teachings of well-known prior art Vembu that clearly discloses the claimed feature(s) as would be clearly recognized by one of ordinary skill in the art. In particular, Vembu discloses the language as related to the claimed feature(s)
  wherein a pseudo error is defined as an instant when a right bit or symbol decision was made, but a margin for the right bit or symbol decision was smaller than a limit value so that an actual error did not occur (see col. 7, lines 8-12,40-44; col. 10, lines 54-59), where the system detects errors but has an acceptable range of values that allow an error to occur without any system adjustments in which this meets the pseudo errors since the system does not consider the errors to be an actual error that requires system adjustment;
  monitoring pseudo error occurrence in the received signal at the receiving end (104a-b) (see col. 7, lines 8-16,40-44; col. 10, lines 54-59; col. 8, lines 5-10);
  decreasing the transmission power gradually from the initial value at the transmission end (104a-b) when the pseudo error occurrence in an error-free reception does not fulfill a predetermined condition (see col. 7, lines 4-7; col. 5, line 66 - col. 6, line 2; col. 9, lines 64-68), where the system decreases power; and
  increasing the transmission power by a predetermined amount when the pseudo error occurrence in the error-free reception fulfills the predetermined condition (see col. 5, lines 41-44,63-65; col. 7, lines 40-62), when errors fall outside the acceptable range an error is detected for system adjustments as evidenced by the fact that one of ordinary skill in the art would clearly recognize. Therefore, as addressed above, the applied reference more than adequately meets the claim limitations.

4. Regarding applicant's argument(s)/comment(s) of claims 13-30, 33-37, 39-43, 45-47, 49-51, and 53-55, the claims are addressed for the same reasons as set forth above and as applied in each claim rejection of the Final Action.